



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 31<sup>ST</sup> DAY OF MARCH, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**WRIT PETITION NO. 7270 OF 2023 (GM-POLICE)**

**BETWEEN:**

1. RATHNAMMA

2. NEETHA G.,

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by PADMAVATHI  
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Location: HIGH  
COURT OF  
KARNATAKA

...PETITIONERS

(BY SRI RAGHAVENDRA GOWDA K., ADVOCATE FOR  
SRI. MOHANKUMARA D., ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA  
REPRESENTED BY ITS SECRETARY,  
DEPARTMENT OF HOME,  
VIDHANA SOUDHA,  
BENGALURU – 560 001.



2. DEPUTY INSPECTOR GENERAL OF PRISONS  
CENTRAL PRISON, PARAPPANA AGRAHARA,  
ELECTRONIC CITY POST,  
BENGALURU – 560 100.
3. CHIEF SUPERINTENDENT OF POLICE  
CENTRAL PRISON, PARAPPANA AGRAHARA,  
ELECTRONIC CITY POST,  
BENGALURU – 560 100.
4. THE POLICE SUB-INSPECTOR  
MASTHI POLICE STATION,  
MARUTHI EXTENSION, MALUR,  
KARNATAKA – 563 130.

...RESPONDENTS

(BY SRI.VINOD KUMAR M., AGA FOR RESPONDENTS)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTING THE R-2 TO CONSIDER THE REPRESENTATION OF THE PETITIONER NO.1 AND 2 DTD 25.03.2023 AND TO RELEASE THE DETENUE-ANAND ON PAROLE FOR A PERIOD OF 15 DAYS FOR HIS MARRIAGE PURPOSE VIDE ANN-A AND A1 AND ETC.,

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

The petitioners are before this Court seeking a direction by issuance of a writ in the nature of *mandamus* to consider the representations submitted by both the petitioners on 25.03.2023 for release of the detenu on parole for a period of



15 days. The representations are submitted to both respondents 2 and 3 - the Deputy Inspector General of Prisons and the Chief Superintendent of Police, Central Prison.

2. Heard Sri. Ragavendra Gowda K., learned counsel for petitioners and Sri Vinod Kumar M., learned Additional Government Advocate for the respondents.

3. Brief facts that lead the petitioners to this Court, in the subject petition, as borne out from the pleadings are as follows:

The 1<sup>st</sup> petitioner is the mother of the detenu one Anand, who now is in the prison on getting convicted for the offences punishable under Sections 302, 201 r/w. Section 34 of the IPC. He was sentenced to life imprisonment. On an appeal filed before this Court, the life imprisonment is said to have been modified to that of imprisonment for 10 years. The detenu is in judicial custody for the last 6 years.

4. The 2<sup>nd</sup> petitioner claims to be in love with the detenu for the last 9 years, who is now aged about 30 years. Representations are given both by the mother of the detenu



and the 2<sup>nd</sup> petitioner, who is said to be in love with the detinue, seeking his release on account of the apprehension that the 2<sup>nd</sup> petitioner would be given in marriage to someone else. The 1<sup>st</sup> petitioner is said to have two sons, both of whom are in prison and the 1<sup>st</sup> petitioner being an aged person and suffering from several ailments avers in the petition that it is her wish to see the 2<sup>nd</sup> petitioner and the detinue - Anand being married and therefore, both have submitted the representations. In the light of those representations being submitted and paucity of time projected, the petitioners are seeking grant of emergency parole for a period of 15 days.

5. The learned counsel appearing for the petitioners - Sri.Raghavendra Gowda K., would contend that the release of the detinue is imperative, otherwise, he will lose the love of his life. Being in prison, he cannot bear the agony of his love getting married to someone else and therefore, seeks emergency parole on any condition that would be imposed upon the petitioner.



6. On the other hand, the learned Additional Government Advocate would submit that a report, as is necessary, under the statute would be secured and only then, the release of the petitioner could be considered.

7. I have given my anxious consideration to the submissions made by the respective learned counsel for the parties and have perused the material on record.

8. The afore-narrated facts are all what is pleaded in the petition. The 1<sup>st</sup> petitioner is the mother of the detenu and the 2<sup>nd</sup> petitioner claims to be in love with the detenu for the last 9 years. The girl who is now aged 30 years has submitted a representation to both respondents 2 and 3 narrating the circumstances for release of the detenu on parole. Though no invitation of any wedding of the 2<sup>nd</sup> petitioner is produced, the averments in the petition would indicate that the 2<sup>nd</sup> petitioner is apprehending her marriage to someone else.

9. This Court directed the learned Additional Government Advocate to secure instructions with regard to the



representations of the petitioners. The learned Additional Government Advocate seeks to place on record a communication from the Prison Authorities that there is no provision for grant of parole to get married. The learned Additional Government Advocate submits that if it were to be anybody else's marriage that the detenu wanted to attend, it would have been a different circumstance. According to him, the objectives of parole as obtaining under Clause 636 of the Prison Manual would not enure to the benefit of the detenu for his release. Sub-clause 12 of Clause 636 of the Prison Manual gives the discretion to the Head of the Institution to grant parole on any other extraordinary circumstances. It is therefore, in the considered view of this Court that this would be an extraordinary circumstance for grant of parole.

10. Reference being made to an order passed by the Co-ordinate Bench on parole in the circumstances becomes apposite. The Co-ordinate Bench has held as follows:

*"2. Learned AGA on request having accepted notice for the respondents vehemently opposes the petition contending that parole & furlough are not a matter of right; petitioner's husband is convicted for the murder of three persons and therefore whatever*



*arguable right he had for parole, also does not avail to him. So contending, he seeks dismissal of the writ petition.*

*3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant a restrictive & conditional indulgence in the matter as under and for the following reasons:*

*a) Petitioner in all fairness has disclosed all the material particulars of the cases in which her husband has been convicted & sentenced; presently he has been serving sentence in the gaol for purging the guilt since last more than two decades i.e., since 02.03.1999, of course with some parole/furlough; he had violated some parole condition earlier, may be true; however, one cannot forget that every saint had a past and every sinner has a future; the fact that a person is convicted and put behind the bars, does not render him a destitute of all liberty & dignity; in matters like this humanistic approach needs to be adopted qua the convicts; a convict has to keep in contact with the civil society although sporadically, so that his societal roots, do not dry up when he languishes in the jail; otherwise, when he returns from the prison after completing the term of sentence, he may be a total stranger and life may prove hard to him; this is not a happy thing to happen in a Welfare State.*

*(b) The provisions of parole/furlough are structured on humanistic grounds for the reprieve of those lodged in gaols for long; the main purpose of releasing a serving convict on parole is to afford to him an opportunity to solve his personal & family problems and to enable him to maintain his links with the civil society; there may be cases of health grounds too; the marriage of convict's younger daughter Chi.S.Monish is scheduled to be performed on 7th & 8th day of November, 2021 at Bastipura, Kollegal; petitioner has produced the Marriage Invitation Card at Annexure-L; ordinarily every Hindu Marriage involves certain rituals such as 'Vivaah Homa' & 'Kanyadaan' that are done with the participation of the parents; even otherwise, when a young daughter is getting married, the presence of her father, is desirable, consistent with the humanitarian*



considerations which inhere in Article 21 of the Constitution of India.

(c) It was Oscar Wilde in a stanza of his poem "The Ballad of Reading Gaol" who lamented about the prison life as under:

*" This too I know .... And wise it were  
If each could know the same ...  
That every prison that men build  
Is built with bricks of shame,  
And bound with bars lest Christ should see  
How men their brothers maim".*

*"Compassion wherever possible and cruelty only where inevitable, is the art of correctional confinement", said the Apex Court in CHARLES SOBRAJ VS THE SUPTD., CENTRAL JAIL, TIHAR, 1978 AIR 1514; after all, the standard of civilization is measured by looking to how the State and Civil Society treat the criminals. The sublime feelings of the spouse & children permeate the prison walls and reach out to the convict, however strong & unkindly they are built; therefore, this court has to facilitate the presence & participation of the petitioner in the ensuing marriage ceremony; an otherwise stand of the court, runs the risk of being branded as 'inhuman' by the right thinking sections of the society, to say the least.*

(d) The vehement contention of learned State Counsel that the petitioner's husband has some blameworthy track record and he may flee away from the clutches of law, do not much impress this court; it is not that, the convict is awarded a capital punishment and therefore he may take a chance to run away from the gallows; What George A. Ellis in his book "Inside Folsom Prison" said about the nature of convicts is quoted by the Apex Court in MARU RAM vs. UNION OF INDIA, (1981) 1 SCR 1196 very pertinently:





*"Contrary to popular opinion, all convicts are not rock-hard individuals lacking sufficient emotional balance. They are people, with fears and aspirations like everyone else. Generally, they don't want to fight with or kill their neighbor any more than the man on the street. They want to live in peace and return to it their loved ones as soon as possible. They are not a different breed of human being or a distinct type of mentality. They are persons who have made mistakes. This point is made not to solicit pity but to bring attention to the fact that any individual could be caught in a similar web and find himself inside a pit such as Folsom Prison".*

*Suitable & stringent conditions can be stipulated by the prison authorities themselves; that would assuage this apprehension.*

*In the above circumstances, this writ petition succeeds in part; the respondents are directed to consider the subject representation and release the convict on parole/furlough from the forenoon of 01.11.2021 till the afternoon of 15.11.2021; the respondents shall stipulate strict conditions as are usually stipulated to ensure the return of convict to the gaol and that he shall not commit any other offence.*

*Costs made easy."*

The Co-ordinate Bench has considered the grant of parole and its importance. The learned counsel for the petitioner has also placed reliance upon the judgment of a Division Bench of the High Court of Rajasthan in the case of **SANJAY ALIAS GAFUDIYA VS. STATE OF RAJASTHAN** disposed on **16.04.2013**, reported in **LAWS(RAJ)-2013-4-21**. The Division Bench has held as follows:



"(3) The petitioner has submitted that during his parole enlargement, his family has fixed up his marriage and the marriage is to be solemnized on 29.04.2013 at Banswara. The petitioner has submitted certain certificates from public representatives in confirmation of the fact that his marriage is scheduled on 29<sup>th</sup> instant.

(4.) With reference to the above mentioned facts, the petitioner has prayed for being granted 30 days emergent parole, particularly for the purpose of his marriage.

(5.) The learned Government Counsel has procured verification from the Superintendent, District Jail, Jalore and it is pointed out that as on 15.04.2013, the petitioner has served about 10 years 1 months and 4 days of actual imprisonment and has earned remissions of about 3 years 6 months and 7 days. His conduct is said to be satisfactory. The learned Government Counsel further unites that earlier, the petition made this prayer for emergent parole on the ground of his marriage before the District Magistrate but on account of nonavailability of the concerned District Magistrate, final orders could not be passed on this prayer. However, the learned Government Advocate further points out on instructions that the police station concerned, as also the Social Welfare Department have sent their reports to the District Magistrate and as per those reports, the marriage of the petitioner is, in fact, scheduled for 29<sup>th</sup> instant.

(6.) The petitioner submits that for the purpose of the present release on parole, he has furnished personal bond and one surety in the sum of Rs.25,000/-. The said bond and surety are obviously for the purpose of his surrendering on or before 17.04.2013.

(7.) On the peculiar facts and in the given set of circumstances, we are of the considered view that when the conduct of the petitioner undergoing sentence is otherwise said to be satisfactory, and he is presently availing of parole; and his marriage is scheduled on 29.04 2013, the interest of justice shall be served if he is granted further indulgence in continuation of his



*parole release order dated 09.03.2013 by another period of about three weeks on the same terms and conditions as contained in the order dated 09.03.2013 and with the stipulation that the bail bond and surety as furnished by the petitioner shall now be read as having the requirement of his surrendering on or before 10.05.2013. Ordered accordingly.*

*(8.) We make it clear that we have passed this order looking to the peculiar facts and circumstances of the case and in the interest of justice. However, the period of enlargement as shall be availed by the petitioner after 17.04.2013 until his surrendering to the custody, i.e., on or before 10.05.2013 shall be counted as the period of emergent parole and not the regular one.*

*(9.) The petition stands partly allowed to the extent indicated above."*

The facts before the Division Bench were that the detenu therein had sought parole on account of his marriage being scheduled on a particular date and emergency parole was granted to the said detenu therein. Following the said judgment of the Division Bench, the Division Bench of the High Court of Bombay in the case of **CECILIA FERNANDES Vs. INSPECTOR GENERAL PANAJI** disposed on **19.01.2017** reported in **LAWS(BOM)-2017-1-129**, has held as follows:

*"7. The issue of release of the prisoner on parole primarily hinges on the interpretation of Rule 324 of the Goa Prison Rules, 2006 and as amended in 2008 to take within its sweep any other sufficient cause other than the grounds on which such parole can be granted in favour of the prisoner. It needs reckoning that the contention of Shri R. Menezes, learned Advocate for the petitioners that the conduct of the petitioners was*



*exemplary and that there were no grievances in that regard despite his release on furlough and parole on earlier occasions did not evoke any submission to the contrary by Shri M. Amonkar, learned Additional Public Prosecutor. Indisputably the prisoner was civilly married to one Gayatri Bansode i.e the petitioner no. 2 as per the undisputed Civil Registration Certificate dated 28.11.2016. The petitioners had moved the respondents for the grant of parole for a period of one month for his marriage having completed 11 years and some months of his sentence as a convict imprisoned for life. It was also not in dispute that the marriage of the prisoner was scheduled on 27.12.2016 but for obvious reasons and that the respondents had vide its order dated 4.1.2017 rejected the application on the premise that there was a possibility of breach of peace in the event of his release on parole and that his marriage did not materialize.*

*8. Rule 324 of the the Goa Prisons Rules, 2006 reads thus:—*

*"When parole to be granted:— Parole may be granted to a prisoner in the event of emergent situations like death or serous illness of father, mother, brother, sister, spouse and children and also marriage of brother, sister and children or any other sufficient cause."*

*9. The amendment thereto in 2008 and particularly Sub Rule (2) of the Goa Prisons Rules, 2006 provides that parole can be granted for any other sufficient cause and is not limited to the marriage of the brother, sister and children which were earlier the emergent situations contemplated in Rule 324 of the Goa Prisons Rules, 2006 apart from the death or serious illness.*

*10. Sanjay (supra), who had been awarded the life sentence by the Additional Sessions Judge (Fast Track) Banswara had moved the parole petition before the Rajasthan High Court after serving more than 10 years of the actual imprisonment. His marriage was fixed by his family and in that context he had submitted certain certificates in confirmation thereof and prayed for the grant of 30 days emergent parole particularly for the purpose of his marriage. The factum of his marriage*



*was undisputed and confirmed from the public records and therefore on the basis of the conduct report which was found to be satisfactory and in the peculiar facts and given set of circumstances, the Division Bench of Rajasthan High Court granted him parole of three weeks on terms and conditions recorded therein.*

*11. Shri M. Amonkar, learned Additional Public Prosecutor on behalf of the respondents contended that Rajasthan Rules contemplated the grant of parole on the ground of personal marriage which was not contemplated in Rule 324 of the Goa Prisons Rules, 2006. Nonetheless even accepting such a contention, the fact remains that the expression "for any other sufficient cause" would take within its sweep the marriage of the prisoner to order his release on parole. Besides, the expression in Rule 324 is illustrative and not exhaustive. Moreover, an omnibus record in the impugned order that there was a possibility of breach of peace in case he was granted parole cannot stand the test of scrutiny when there were no assertions disputing the fact that he had been earlier enlarged on furlough or parole.*

*12. Besides, Shri R. Menezes, the learned Advocate for the petitioners submitted that the marriage of the convict prisoner was rescheduled on 27.1.2017 and accordingly he had to be given the benefit of parole commencing a week prior thereto.*

*13. We have no hesitation to accept the contention of Shri R. Menezes in the matter of grant of parole. The respondent no. 2 is accordingly directed to examine his request for parole commencing a week prior to 27.1.2017 in consonance with the observations recorded as before."*

In the light of the afore-quoted judgments of the co-ordinate Bench of this Court and the judgments of the Division Bench of the Rajasthan High Court and that of the High Court of Bombay, I deem it appropriate to allow the petition, owing to



the peculiar facts and circumstances of the case and in the interest of justice.

11. For the aforesaid reasons, the following:

**ORDER**

- (i) The Writ Petition is allowed.
- (ii) The respondents 2 and 3 are directed to consider the representations of the petitioners and release the detinue/Anand (convict Prisoner No.11699) on parole from the forenoon of 05.04.2023, till the evening of 20.04.2023.
- (iii) The respondents 2 and 3 shall stipulate strict conditions as are usually stipulated, to ensure return of the detinue to the gaol and that he shall not commit any other offence during the period of parole.

**Sd/-  
JUDGE**

Bkp/nvj  
List No.: 1 Sl No.: 65